87-263

Supreme Court, U.S.
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AUG 17 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

THE PEOPLE OF THE STATE OF MICHIGAN

PETITIONER

v

BERNICE JOHNSON

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS

JOHN D. O'HAIR
Prosecuting Attorney
County of Wayne

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Chief of the Criminal Division
Research, Training and Appeals

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QUESTIONS PRESENTED

I.

UNDER THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION, MAY POLICE LAWFULLY PURSUE ONE FOR WHOM THEY HAVE AN ARREST WARRANT INTO THE DWELLING OF A THIRD PARTY?

II.

IS THE EXCLUSION OF EVIDENCE AN APPROPRIATE REMEDY UNDER THE FOURTH AMENDMENT WHERE THERE EXISTS NO TRUE CAUSAL NEXUS BETWEEN AN UNLAWFUL ENTRY AND THE SEIZURE OF EVIDENCE, AS WHERE POLICE, UNDER A GOOD FAITH MISAPPREHENSION OF THE LAW, MAKE A WARRANTLESS ENTRY INTO A DWELLING, SEE EVIDENCE IN PLAIN VIEW WHICH THEY COULD HAVE OBTAINED LEGITIMATELY BY PROCURING A SEARCH WARRANT, AND PROCEED TO OBTAIN A WARRANT BEFORE SEARCHING THE PREMISES?

III.

HAVE RECENT DEVELOPMENTS IN THE LAW OF CIVIL RIGHTS LIABILITY UNDERCUT THE DETERRENT RATIONALE FOR THE EXCLUSIONARY RULE ENOUGH TO JUSTIFY ITS ABOLITION AS A ROUTINE REMEDY FOR VIOLATIONS OF THE FOURTH AMENDMENT?

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IN THE SUPREME COURT OF THE UNITED STATES

THE PEOPLE OF THE STATE OF MICHIGAN

OCTOBER TERM, 1986

v

BERNICE JOHNSON

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS

NOW COMES the State of Michigan, Petitioner, through JOHN D. O'HAIR, Prosecuting Attorney for the County of Wayne, TIMOTHY A. BAUGHMAN, Chief of the Criminal Division, Research, Training, and Appeals, and JEFFREY CAMINSKY, Assistant Prosecuting Attorney, and prays that a writ of certiorari issue to review the

judgment of the Court of Appeals of the State of Michigan, entered in this cause on November 4, 1985, rehearing denied December 23, 1985, leave to appeal granted by the Michigan Supreme Court on June 24, 1986, and the order granting leave vacated and leave to appeal denied on June 17, 1987.

OPINIONS BELOW

The opinion of the Michigan Court of Appeals is reported at 146 Mich App 705; 381 NW2d 791 (1985), and appended below as Appendix A; the order of the court denying rehearing is unreported, and appended below as Appendix B. Michigan Court of Appeals Docket No.

70202. The order of the Michigan Supreme Court granting leave to appeal is reported at 425 Mich 871 (1986), and appended below as Appendix C; the order after argument vacating the earlier order and denying leave to appeal is unreported as yet, and appended below as Appendix D. Michigan Supreme Court Docket No. 78031.

STATEMENT OF JURISDICTION

The Michigan Court of Appeals entered judgment on June 24, 1985, and denied rehearing on December 23, 1985. The Michigan Supreme Court entered judgment on June 17, 1987. This Court's jurisdiction is invoked under 28 USC, sec 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides, in pertinent part:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath of affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

> ". . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life,

liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

On January 21, 1981, the Detroit Police Department had in its possession a valid arrest warrant, charging one Joseph Junior Foster with a narcotics offense. Knowing that Foster often frequented a house owned by Respondent, police set up a surveillance in the vicinity of her house, waiting for Foster to arrive. Conditions in the neighborhood were icy and slippery.

When Foster pulled his car into Respondent's driveway, the police team converged and tried to arrest him. Using a key, Foster entered

Respondent's dwelling before the police could take him into custody; the record suggests that Foster was unaware that the police were trying to apprehend him, and that the police were too busy trying to keep from crashing into other vehicles on the street, or slipping on the ice, to call for him to halt, due to the condition of the road and sidewalks.

Two officers, Sgt. Joseph Piersante and Officer Henry Scott, arrived on the front porch seconds after Foster entered the dwelling, and followed him into the house. Scott arrested Foster a few feet inside the door, and Piersante moved past the two of them to secure the immediate area. Five or six feet down the hall, through an open bedroom door, he observed drug paraphernalia, including a

glass-bottom tray with white powder, a number of coin envelopes, measuring spoons and a triple beam scale. When backup officers arrived, Piersante sent Scott to obtain a search warrant for the house, while the rest of the police team secured the premises.

Ninety minutes later, Scott returned with the warrant, and police proceeded to enter and search the bedroom. A number of the items seized contained heroin, and Foster and Respondent were both charged with possession of heroin, with intent to deliver.

On April 13, 1982, the trial court denied the defendants' motion to suppress evidence obtained at the scene. On December 9, 1982, sitting without a jury, the trial court convicted both defendants as charged.

On November 4, 1985, the Court of Appeals reversed Respondent's conviction. The majority held that under this Court's decision in United States v Steagald, 451 US 204; 101 S Ct 1642; 68 L Ed 2d 38 (1983), the police could not enter Respondent's house without a search warrant; the dissent, citing Segura v United States,, 468 US 796; 104 S Ct 3380; 82 L Ed 2d 599 (1984), noted that securing a dwelling pending arrival of a search warrant did not constitute a search, and would have held that the police actions in arresting Foster and securing the premises were consistent with the holding in Steagald. On December 23, 1985, the Court of Appeals denied Petitioner's motion for rehearing, by the same majority vote.

On June 24, 1986, the Michigan Supreme Court granted Petitioner leave to appeal. On June 17, 1987, following briefing and argument, that court vacated its order of June 24, 1987, and denied leave to appeal, "for the reason that the Court is no longer persuaded that the questions presented should be reviewed by the Court."

REASONS FOR GRANTING THE WRIT

While this Court has often dealt with problems relating to arrests and related searches, it appears that the facts of this case skirt around the edges of all existing precedents of this Court. As the facts of this case suggest that the problems posed may recur, bench and bar across the

country would benefit from a concise pronouncement of this Court on the interrelationship between a lawful pursuit and a lawful entry into the house of a third party, whether or not this Court deems this case an appropriate one for further development of the "good faith," "inevitable discovery," or "independent source" doctrine. And, should this Court choose to reflect upon recent trends in the law of civil rights liability, it will find that most of the rationale for the exclusionary rule itself have vanished, and that the Court could take a giant step toward making law enforcement less sporadic, and the law itself less toothless, by making the concept of "reasonable search and seizure" a question of fact, and restricting application of the

exclusionary rule to those instances where official conduct is so outrageous that its toleration would be unconscionable in a court of law.

A.

In United States v Watson, 423 US 411; 96 S Ct 820; 46 L Ed 2d 598 (1976), this Court held that police may lawfully make a warrantless arrest in a public place, upon probable cause. In United States v Santana, 427 US 38; 96 S Ct 2406; 49 L Ed 2d 300 (1976), the Court held that hot pursuit justified a warrantless entry into a private dwelling, in order to apprehend a fleeing felon. See also, Warden v Hayden, 387 US 294; 87 S Ct 1642; 18 L Ed 2d 782 (1967). Thus, while recognizing the public's legitimate privacy interests in

passing unmolested in public, or in enjoying the privacy of one's own home, the Court recognized a need to accomodate the legitimate needs of law enforcement, and that the Constitution permitted the police to act without prior judicial approval -- at least in emergencies.

However, as in any free country, the State's legitimate needs were not without limits. And in Payton v New York, 445 US 573; 100 S Ct 1371; 63 L Ed 2d 639 (1980), this Court held that police could not enter a suspect's dwelling merely upon probable cause -- but that an arrest warrant alone would suffice to enter the suspect's own residence. Similarly, in United States v Steagald, 451 US 204; 101 S Ct 1642; 68 L Ed 2d 38 (1983), the Court held that an arrest warrant

alone would not suffice to enter a third party's dwelling -- but in speaking for the majority, Justice Marshall took care to note the limited nature of such a rule:

> "[T]he situations in which a search warrant will be necessary are few. As noted in Payton v New York, supra, an arrest warrant alone will suffice to enter a suspect's own residence to effect his arrest. Furthermore, if probable cause exists, no warrant is required to apprehend a suspected felon in a public place. Thus, the subject of an arrest warrant can be readily seized before entering or after leaving the home of a third party. Finally, the exigent-circumstances doctrine significantly limits the situations in which a search warrant would be needed. For example, a warrantless entry of a home would be justified if the police were in 'hot pursuit' of a fugitive. Thus, to the extent that searches for persons pose special problems, we believe that the exigent-circumstances doctrine is adequate to accommodate legitimate law

enforcement needs." Steagald at 221.

Unfortunately, life is infinitely complex, and rarely bends to fit easily within the precedents of any court of law. In this case, seeking to execute a valid arrest warrant, the police undertook a brief pursuit to try to arrest Foster before he entered Respondent's dwelling -- an act which would have comported with Justice Marshall's notion in Steagald of "readily seiz[ing] a suspect before he reaches a dwelling. Once having committed themselves to such a course of action, however, it would be unreasonable -- and potentially dangerous -- to require them to stop mid-way through an attempted apprehension; and in any event, the rule in Santana and Hayden appears to permit police to follow a suspect they are pursuing into a dwelling. Even

so, Santana and Hayden both involved suspects who fled into their own homes -- which provides a basis for distinction, albeit one with no practical justification.

Thus, it appears that the Michigan courts erred in applying the existing precedents of this Courts -- reading the limitations of Payton and Steagald too broadly, and the grants of authority in Watson, Santana, and Hayden too narrowly. And since Michigan relied exclusively on Federal law to hold the entry to be unlawful, Petitioner asks this Court to correct this misunderstanding.

B.

Should this Court choose to inquire further into the matter, it will find that this case presents an opportunity to develop and clarify several nascent trends in the law.

Since Respondent cannot reasonably claim that the police had no basis for a search warrant, she cannot show any causal nexus between the claimed illegality and the resulting evidence -- simply put, since the police would have discovered the evidence inevitably in the due course of executing an easily obtainable search warrant, there is no reason to excuse Respondent from responsibility for her

crimes. Cf, Nix v Williams, 467 US 431; 104 S Ct 2501; 81 L Ed 2d 377 (1984). If courts are to be arbiters of truth, there is simply no rational basis for excluding evidence simply because the police shows what hindsight shows to be the one wrong path, among many proper ones, in obtaining evidence of criminal conduct. And where the courts themselves have made the law insufficiently clear to eliminate the need for disagreements among lawyers -- or dissents among justices -- it makes no sense to suppress evidence obtained where the "correct" and "legal" course of action cannot be determined until well after the fact, and the police are doing their best to uphold the law as they understand it. This is particularly true where, as here, the police brought the matter

before a judicial officer as soon as practicable, and obtained a warrant to proceed as they did. Cf, Massachusetts v Shepard, 468 US 981; 104 S Ct 3424; 82 L Ed 2d 737 (1984); United States v Leon, 468 US 897; 104 S Ct 3405; 82 L Ed 2d 677 (1984). Those who would break the law are not, after all, entitled to perfection from the agents of the State; rather, they are entitled only to the State's best efforts.

In this context, it makes little sense to permit criminal defendants to subvert the true purpose of our Constitutional protections by quibbling over details -- details which neither excuse their acts, nor make evidence of their crimes inaccessible to the police. This

recalls Justice Cardozo's observation in Snyder v Massachusetts, 291 US 97, 121-122; 54 S Ct 330; 78 L ed 674; 90 ALR 575 (1934), that "to make the securities of the constitution depend upon such quiddities is to cheapen and degrade them." The rule Petitioner sees would be a small extension of the inevitable discovery doctrine of Nix v Williams, supra, to require a true causal relationship between alleged official misconduct and the seizure of evidence -- limiting the reach of the exclusionary rule to those situations where the police could not lawfully have obtained the items seized.

C.

This Court has required the states to enforce an exclusionary remedy for violations of the Fourth Amendment since its decision in Mapp v Ohio, 367 US 643; 81 S Ct 1684; 6 L Ed 2d 1081 (1961),, which overruled the holding in Wolf v Colorado, 338 US 25; 69 S Ct 1359; 93 L Ed 1782 (1949). However, recent developments in the law of civil rights liability, see, inter alia, Tennessee v Garner, 471 US 1; 105 S Ct 1694; 85 L Ed 2d 1 (1985); Malley v Briggs, 475 US ___; 106 S Ct ___; 89 L Ed 2d 271 (1986); City of Los Angeles v Heller, 475 US ___; 106 S Ct ___; 89 L Ed 2d 806 (1986); Donta v Hooper, 774 F2d 716 (CA 6, 1985); Jamieson v Shaw, 772 F2d 1205 (CA 5, 1985), have undercut the deterrent

rationale for the exclusionary rule, leaving its continuing validity open to debate, since there now exist numerous remedies for redress of constitutional grievances that do not involve suppressing evidence of guilt.

While this issue has not been raised below, this Court is the only forum which has the power to reexamine the propriety of the exclusionary rule as a remedy. For this reason, this Court is Petitioner's first appropriate forum to advance the argument for its abolition. And while recognizing that the weight of precedent is often compelling, Petitioner submits that the current state of the law does not require an exclusionary remedy to vindicate the legitimate interests protected by the Fourth Amendment, and that this Court

would do much to restore public confidence in the administration of justice by abolishing the exclusionary rule as a general remedy for violations of the Fourth Amendment. As Chief Justice Burger has noted, "the exclusionary rule has been operative long enough to demonstrate its flaws," and it is now time "to modify its reach, even if it is retained for a small and limited category of cases." Stone v Powell, 428 US 465, 496; 96 S Ct 3037; 49 L Ed 2d 1067 (1976)(Burger, CJ, concurring.)

CONCLUSION

WHEREFORE, Petitioner prays that this Court grant plenary review, reverse the holding of the Michigan Court of Appeals, and remand the cause for proceedings consistent with this Court's opinion.

JOHN D. O'HAIR
Wayne County Prosecuting Attorney

TIMOTHY A. BAUGHMAN
Chief of the Criminal Division
Research, Training and Appeals

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Dated: July 20, 1987

JC/hdm

APPENDIX

APPENDIX "A"

COURT OF APPEALS OPINION

November 4, 1985

FOR PUBLICATION

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

No. 70202

v

BERNICE JOHNSON,
Defendant-Appellant.

Before: V.J. Brennan, P.J., Cynar and J.W. Fitzgerald,* JJ.

PER CURIAM

Defendant was convicted of possession of heroin with intent to deliver in violation of MCL 333.74012a; MSA 14.15(7401) after a bench trial in Detroit Recorder's

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*Retired Supreme Court Justice sitting on the Court of Appeals by assignment.

Court. She was sentenced to 3 1/2 to 20 years in prison. Defendant appeals her conviction to this court as of right.

The record indicates that on January 21, 1981, there was a valid arrest warrant outstanding on Joseph Junior Foster. Two Detroit police officers, Joseph Piersante and Henry Scott, saw Foster enter the defendant's residence at 4226 Grayton in the City of Detroit. The officers followed him into the house. Officer Scott entered the premises first and Piersante followed him. Scott arrested Foster a few feet inside the door. Piersante moved past them to secure the immediate area. Five or six feet down the hall he observed drug cutting and packaging paraphernalia in a bedroom to which the door was open. There was

also a tray with a glass bottom with white powder on it, a number of coin envelopes, a triple beam scale and measuring spoons. Piersante requested that Scott go and obtain a search warrant for the house. Neither officer had entered the bedroom at that time. Four to six other officers waited with Piersante to secure the premises. Two people, one of whom was the defendant, were found in the house. About ninety minutes later Scott returned with the warrant. At that time the police finally entered the bedroom and the narcotics in question were seized. Officer Scott's testimony corroborated the testimony of Piersante. A third police officer, Wallace Jezewski, testified to substantially the same facts although he said that Scott or Piersante may have entered the bedroom.

A suppression hearing was held on April 13, 1982. Foster and defendant sought to suppress the evidence obtained from the scene. The motion to suppress was subsequently denied.

Foster and the defendant were tried together. Both of them testified at their trial and confirmed that Foster was arrested a few feet inside the hours. They denied any knowledge of the drugs found in the house. It was stipulated that a number of exhibits contained heroin.

Defendant claims that the evidence should have been suppressed because it was the subject of an illegal search. The parties do not contest the validity of the arrest warrant or the execution of the arrest warrant at the

time they entered the house. The officers had gone to the house on Grayton in order to arrest Foster. Scott and Piersante were the first persons to arrive at the house and arrested Foster immediately.

The issue is whether the search of the third party's home was an illegal search. Our reading of United States v Steagald, 451 US 204; 101 SCt 1642; 68 L Ed 2d 38 (1983) convinces us that the search was indeed illegal and that the evidence should have been suppressed.

In Steagald the police had an arrest warrant for a man named Lyons but went to the home of a third party rather than to the home of a person named on the warrant. They entered the third party's home, found

incriminating evidence and prosecuted the third-party homeowner. This is exactly the situation that we are faced with here. In Steagald the Supreme Court held that a search warrant was necessary in such instances because an arrest warrant for another person did not justify the search of a third party's home. Steagald applies to the facts of this case. The evidence should have been suppressed; the conviction must be reversed.

Defendant's other claim, regarding the prosecution's failure to present a res gestae witness, was not preserved by a timely motion before trial. People v Robideau, 94 Mich App 663; 289 NW2d 846 (1980), aff'd 419 Mich 458 (1984). It is the accused's responsibility to move for a hearing

during trial or for a new trial prior to seeking appellate review. People v LeFlore, 96 Mich App 557; 293 NW2d 628 (1980), lv den 409 Mich 927 (1980). The defendant has not met either of these prerequisites. We therefore decline to address this issue on appeal.

Reversed.

/s/ Walter P. Cynar

/s/ John W. Fitzgerald

COURT OF APPEALS OPINION

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

Docket # 70202

v

BERNICE JOHNSON,

Defendant-Appellant.

BEFORE: V.J. Brennan, P.J., and Cynar and J.W. Fitzgerald,* JJ. V.J. Brennan, P.J., Dissenting

I respectfully dissent.

From these facts, I would find the search here to be valid and find that the denial of the suppression motion was proper. For a valid search warrant to be issued, an affidavit has

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*Retired Supreme Court Justice sitting on the Court of Appeals by assignment.

to be executed. The affidavit for a search warrant requires the officer making the arrest to have probable cause as to what the search will produce. Here, during a valid arrest of a third party and the securing of the area, the officers saw drugs and drug paraphernalia. This established the probable cause. They then sent for a search warrant and did not search the home of the third party until the warrant arrived.

We can distinguish Steagold v U.S., supra, relied upon by the majority.

In Steagold, there was a search of the third party's home before the warrant arrived. That did not occur here.

Defendant claims that securing the premises amounted to a search. The United States Supreme Court in Segura v U.S. 104 S Ct Rep at 3389 said:

> "We hold, therefore, that securing a dwelling, on the basis of probable cause to prevent the destruction or removal of evidence while a search warrant is being sought is not itself an unreasonable seizure of either the dwelling or its contents."

Here, we had a valid arrest, we had proper securing of the premises; we have the search after a valid search warrant was issued.

The evidence was properly admitted.

I would affirm.

/s/ Vincent J. Brennan

APPENDIX "B"

COURT OF APPEALS ORDER DENYING REHEARING

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, Held at the Court of Appeals in the City of Detroit, on the Twenty-third day of December in the year of our Lord one thousand nine hundred and eighty-five.

Present the Honorable

VINCENT J. BRENNAN
Presiding Judge

WALTER P. CYNAR
JOHN W. FITZGERALD
Judges

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v Docket #70202
L.C. #8100509

BERNICE JOHNSON,
Defendant-Appellant.
_____/

In this cause a motion for rehearing is filed by plaintiff-appellee and no answer in opposition thereto having been filed, and due consideration thereof having been had by the Court,

IT IS ORDERED that the motion for rehearing be and the same is hereby DENIED.

Judge Vincent J. Brennan would grant the motion for rehearing.

STATE OF MICHIGAN -- ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 10th day of January in the year of our Lord one thousand nine hundred and eighty-six.

/s/ Corbin R. Davis

Chief Clerk

APPENDIX "C"

MICHIGAN SUPREME COURT
ORDER GRANTING LEAVE

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the City of Lansing, on the 24th day of June in the year of our Lord one thousand nine hundred and eighty-six.

Present the Honorable

G. MENNEN WILLIAMS,
Chief Justice

CHARLES L. LEVIN,
JAMES H. BRICKLEY,
MICHAEL F. CAVANAGH,
PATRICIA J. BOYLE,
DOROTHY COMSTOCK RILEY,
DENNIS W. ARCHER,
Associate Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

v

SC: 78031
COA: 70202
LC: 81-00509

BERNICE JOHNSON,
Defendant-Appellee.

On order of the Court, the application for leave to appeal is considered, and it is GRANTED.

The defendant shall file with the Recorder's Court for the City of Detroit an affidavit concerning her present financial status (see guidelines at 387 Mich xxxi). The prosecutor shall be furnished a copy of the financial affidavit and may challenge the defendant's assertion of indigency within 21 days after receiving the affidavit. The challenge, if brought, shall be resolved at a hearing before the Recorder's Court for the City of Detroit at which the prosecution, the defendant, and an attorney designated to represent the defendant at the hearing shall appear personally to aid

the court's inquiry. The Recorder's Court for the City of Detroit, on a finding of indigency, shall appoint the City of Detroit, on a finding of indigency, shall appoint counsel for the defendant and shall furnish any portion of the record counsel may require.

STATE OF MICHIGAN -- ss.

I, CORBIN R. DAVIS, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 24th day of June in the year of our Lord one thousand nine hundred and eighty-six.

/s/ Corbin R. Davis Clerk.

Seal

APPENDIX "D"

MICHIGAN SUPREME COURT ORDER DENYING LEAVE

AT A SESSION OF THE SUPREME COURT OF THE UNITED STATE OF MICHIGAN, Held at the Supreme Court Room, in the City of Lansing, on the 17th day of June in the year of our Lord one thousand nine hundred and eighty-seven.

Present the Honorable:

DOROTHY COMSTOCK RILEY,
Chief Justice

CHARLES L. LEVIN,
JAMES H. BRICKLEY,
MICHAEL F. CAVANAGH,
PATRICIA J. BOYLE,
DENIIS W. ARCHER,
ROBERT P. GRIFFIN,
Associate Justices

12 May 87

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

BERNICE JOHNSON,

Defendant-Appellee.

SC:	78031
COA:	70202
LC:	81-00509

On order of the Court, leave to appeal having been granted and the Court having considered the briefs and oral arguments of the parties, the order of June 24, 1986, granting leave to appeal is VACATED and leave to appeal is DENIED for the reason that the Court is no longer persuaded that the questions presented should be reviewed by the Court.

Boyle, J., states:

"I would remand to the trial court for a determination as to co-defendant Foster's connection with the premises. See Steagald v United States, 451 US 204, 230-231 (1981). Steagald precludes entry and search of the premises of 'a third party' on the basis of an arrest warrant for another subject, absent consent or exigent circumstances. I would retain jurisdiction."

STATE OF MICHIGAN--ss.

I, CORBIN R. DAVIS, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 17th day of June in the year of our Lord one thousand nine hundred and eighty-seven.

/s/ Corbin R. Davis ,Clerk.

Seal